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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 782

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, INTERNATIONAL, AFL-CIO,

Petitioner,

—v.—

TRANS WORLD AIRLINES, INC.,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Respondent Trans World Airlines, Inc. ("TWA") submits this brief in opposition to the petition of Air Line Stewards and Stewardesses Association International, AFL-CIO ("ALSSA") for a writ of certiorari.

Question Presented

The basic question presented by petitioner is whether the Railway Labor Act, 45 U. S. C. §§151, *et seq.*, as amended to include common carriers by air engaged in interstate or foreign commerce, 45 U. S. C. §§181, *et seq.*, covers the employees of such a carrier who are hired outside the continental United States and its territories and who perform their services wholly outside the continental United States and its territories.

This same question was recently presented to this Court by petitioner in *Air Line Stewards and Stewardesses As-*

sociation, International v. *Northwest Airlines, Inc.*, No. 429 (October Term 1959) and found unworthy of review (361 U. S. 901).

Statutes Involved

Respondent will cite provisions of the Air Carrier Amendment of the Railway Labor Act (49 Stat. 1189, 45 U. S. C. §§181, *et seq.*), of the Railway Labor Act, as amended (44 Stat. 577, as amended, 48 Stat. 926, 45 U. S. C. §§151, *et seq.*), of the Interstate Commerce Act (49 U. S. C. §§1, *et seq.*), of the Civil Aeronautics Act of 1938 (52 Stat. 977, 49 U. S. C. §§401, *et seq.*), and of the Federal Aviation Act of 1958 (72 Stat. 737, 49 U. S. C. A. §§1301, *et seq.*), set forth in petitioner's Appendix A.

Statement of the Case

TWA is a certificated common carrier by air engaged in interstate and foreign commerce (R. 4, 10-17, 21), and, as such, is subject to the Railway Labor Act, as amended to include common carriers by air, 45 U. S. C. §181. ALSSA is a labor union that has been designated by the National Mediation Board since 1947 to represent flight stewards and hostesses employed by TWA "for the purposes of the Railway Labor Act" (R. 3, 9-10, 20). The scope of that designation has been mutually agreed upon by the parties in all labor agreements since 1947 as follows:

> "The Air Line Stewards and Stewardesses Association, International, has been certified by the National Mediation Board as the designated and authorized representative of the hostesses and flight pursers in the employ of the Company *who are nationals or residents of the United States*, for the purposes of the Railway Labor Act, as amended." (Emphasis supplied.) (R. 63)

TWA has from time to time employed flight stewards (or pursers) and hostesses, who are foreign nationals, residing outside the continental United States and its territories. These employees serve only on TWA planes departing, flying and landing outside the continental United States and its territories. At the time this action was filed TWA had approximately 50 such persons in its employ.

TWA refused ALSSA's request that TWA bargain with ALSSA as the designated representative of the above-mentioned foreign stewards and hostesses (R. 5-7, 17-19, 21-22). ALSSA thereupon commenced this suit in the United States District Court for the Southern District of New York, alleging that TWA by its refusal had violated the Railway Labor Act and requesting that the alleged violations be enjoined (R. 2, 8-9).

After answer, ALSSA filed a motion for judgment on the pleadings and TWA filed a cross-motion for summary judgment (R. 23). The District Court denied plaintiff's motion for judgment on the pleadings and granted TWA's motion for summary judgment, holding that the Railway Labor Act was inapplicable to foreign nationals residing abroad and flying on TWA planes wholly outside the continental United States and its territories (R. 23-43). On appeal, the decision of the District Court was affirmed *per curiam* by the Court of Appeals for the Second Circuit (R. 70-72).

Reasons for Denying the Writ

I. *The Basic Question Has Been Settled by the Courts of Appeal.*

The Courts of Appeal that have passed on the question presented are unanimous in holding that the Railway Labor Act, as amended to apply to common carriers by air engaged in interstate or foreign commerce, does not cover

the employees of such carriers who are employed and perform their services wholly outside the continental United States and its territories. *Air Line Stewards and Stewardesses Association, International* v. *Trans World Airlines, Inc.*, 273 F. 2d 69 (2d Cir. 1959); *Air Line Stewards and Stewardesses Association, International* v. *Northwest Airlines, Inc.*, 267 F. 2d 170 (8th Cir. 1959), *cert. den.*, 361 U. S. 901 (1960); *Air Line Dispatchers Association* v. *National Mediation Board*, 189 F. 2d 685 (D. C. Cir.), *cert. den.*, 342 U. S. 849 (1951). The National Mediation Board, the administrative agency charged with the administration of the Air Carrier Amendment to the Railway Labor Act, reached the same conclusion after a public hearing. This decision was affirmed in the *Air Line Dispatchers* case, *supra*.

Every contention made by petitioner in its petition for certiorari has been conclusively refuted by these decisions. The question presented having been settled by the lower courts, it is unnecessary for this Court to exercise its jurisdiction.

II. *The Courts of Appeal Have Correctly Decided the Question.*

The Railway Labor Act, as Amended, to apply to air carriers is clear. If it were not, its legislative history and the canons of statutory construction would support the interpretation given it by the Courts of Appeal.

A. Congress itself has recently reconsidered and adhered to its original legislative determination not to apply the Air Carrier Amendment to employees of common carriers by air residing and performing their services wholly outside the continental United States and its territories. After the decision in the *Air Line Dispatchers* case, *supra*, the union took the issue before Congress. In 1954 an omnibus aviation bill, S. 2647, that ultimately led to the Federal Aviation Act of 1958 was introduced in Congress. Section

1201(b)(1) of S. 2647 proposed in behalf of the union to amend Sections 201 and 202 of the Railway Labor Act, 45 U. S. C. §§181 and 182, by providing that "the definition of the term 'employee' set forth in Section 1 of this Act [45 U. S. C. §151] shall not be applicable to this title" [e.g., Title II, Air Carrier Amendment]. The object of the proposed amendment was to include within the coverage of the Air Carrier Amendment employees of air carriers residing and performing their services wholly outside the continental United States and its territories. After extensive hearings the Senate Committee on Interstate and Foreign Commerce concluded that such an amendment should not be adopted. The Committee in its report dealt at length with the settled construction of the statute that petitioner now asks this Court to overrule. The Committee stated in its report:

> "The act as it is presently worded has been interpreted by the National Mediation Board and the courts not to extend to employees of air carriers based outside the continental limits of the United States and its territories. In 1949, the National Mediation Board ruled that title II of the Railway Labor Act does not cover foreign-based employees. The Board's ruling was based on the view that to extend the act to cover employees based abroad would bring this labor legislation into direct conflict with labor laws of foreign countries.*

* Respondent Northwest Airlines, Inc., pointed out in its brief in opposition to the petition for certiorari filed by this petitioner in the case of *Air Line Stewards and Stewardesses Association, International* v. *Northwest Airlines, Inc.*, 267 F. 2d 170 (8th Cir.), *cert. den.*, 361 U. S. 901 (1960); that the Philippine Government had certified the Northwest Airlines Philippine Employees Association (NAPEA) as the exclusive bargaining agent for the employees of Northwest Airlines employed at or out of the Philippine Islands. *Brief in opposition to petition for writ of certiorari to the U. S. Court of Appeals for the 8th Circuit, Air Line Stewards and Stewardesses Association, International* v. *Northwest*, Docket No. 429, p. 2 (October Term 1959).

In addition, the Board held that to attempt application of the Railway Labor Act in a foreign country, rather than the law of the country, would be a challenge to its national sovereignty to govern within its own boundaries. It was noted that the United States would rightly reject any attempt of a foreign government to apply its labor laws in this country. This determination by the National Mediation Board as to the construction of the present language regarding jurisdiction appearing in section 201 of the Railway Labor Act was later upheld by the District of Columbia Court of Appeals in *Air Line Dispatchers Association* v. *National Mediation Board* . . . .

"In addition, it was pointed out in the testimony that an attempt to give extraterritorial effect to the Railway Labor Act would run counter to a long-established doctrine that the labor laws of one country should not be given extraterritorial effect and applied in a foreign country. In order to adopt the amendment proposed, the committee would give our laws an application contrary to the decision of the court mentioned above but also contrary to a long-recognized policy by this country. This would invite the imposition of foreign labor standards upon employees of foreign industry residing in this country.

"The testimony offered was conflicting. Representatives of the Air Line Dispatchers Association, A. F. of L., argued for the application of the Railway Labor Act to employees based abroad, and the spokesman for the Airlines Personnel Relations Conference and the Air Transport Association opposed such amendment for the reasons stated above. On the testimony offered the committee would not be justified in making such a sharp departure from long-established American policy

as is proposed in this bill" * Sen. Doc. No. 163, 83rd Cong., 2nd Sess. Aviation Study 69-70 (1955).

It is, of course, for Congress and not the courts to determine whether the Railway Labor Act should be extended to employees of foreign nationality based abroad and flying wholly outside the continental limits of the United States. Moreover, if there were any ambiguity in the statute, the failure of Congress to adopt legislation specifically designed to overrule a judicial interpretation similar to that here complained of is "persuasive of legislative recognition that the judicial construction is the correct one." *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 488 (1940).

B. Petitioner has taken the position before the lower courts that Title II of the Railway Labor Act (Air Carrier Amendment), 45 U. S. C. §§181, *et seq.*, unlike Title I of the Railway Labor Act, 45 U. S. C. §§151, *et seq.*, expressly extended the application of the Railway Labor Act to every employee of carriers by air engaged in foreign or interstate commerce on a world-wide basis. All three circuit courts, on the contrary, found that both Title II and I of the Railway Labor Act are expressly limited in their territorial scope by Sections (1) and (2) of the Interstate Commerce Act, Subdivision (2) of which provides:

> "The provisions of this chapter shall also apply to such transportation of passengers and property and transmission of intelligence, *but only in so far as such transportation or transmission takes place within the United States* . . . " (Emphasis supplied.)

49 U. S. C. §1 (2). *Air Line Stewards and Stewardesses Association, International* v. *Trans World Airlines, Inc.*,

* This section of the committee report was cited by the 8th Circuit in *Air Line Stewards and Stewardesses Association, International* v. *Northwest Airlines, Inc.*, 267 F. 2d 170, 174-75 (8th Cir. 1959), *cert. den.*, 361 U. S. 901 (1960).

273 F. 2d 69, 70 (2d Cir. 1959); *Air Line Stewards and Stewardesses Association, International* v. *Northwest Air-Lines, Inc.*, 267 F. 2d 170, 173 (8th Cir. 1959), *cert. den.*, 361 U. S. 901 (1960); *Air Line Dispatchers Association* v. *National Mediation Board*, 189 F. 2d 685, 690 (D. C. Cir.), *cert. den.*, 342 U. S. 849 (1951).

Title I is indisputably so limited, 45 U. S. C. §151 (definition of "carrier"). The territorial scope of Title II is expressly aligned with the territorial scope of Title I. Section 201 of Title II, 45 U. S. C. §181, provides in part:

> "All of the provisions of sections 151, 152, and 154-163 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, ..."

Section 202 of Title II, 45 U. S. C. §182 provides:

> "The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of sections 151, 152 and 154-163 of this title shall apply to said carriers by air and their employees *in the same manner and to the same extent* as though such carriers and their employees were specifically included within the definition of 'carrier' and 'employee,' respectively, in section 151 of this title." (Emphasis supplied.)

Section 203 of Title II, 45 U. S. C. §183, provides in part:

> "The services of the Mediation Board may be invoked in a case under sections 181-188 of this title in the same manner and to the same extent as are the disputes covered by section 155 of this title."

Petitioner agrees that under Section 202 of Title II carriers by air and their employees engaged in interstate or foreign commerce should be treated as though they were "carriers" and "employees" within the definitions of those terms in Title I of the Railway Labor Act, 45 U. S. C. §151. However, contrary to all tenets of statutory construction, petitioner reads Section 202 as if the words "in the same manner and to the same extent" were omitted from the section. The inescapable effect of those words is that Section 202 not only adds common carriers by air to the type of carrier covered by the Railway Labor Act but it also makes the territorial coverage of that Act the same for common carriers by air as it is for common carriers by rail.

C. Even if the territorial scope of the Air Carrier Amendment was not expressly limited to the continental United States and its territories, the circuit courts still would have reached the same result since "it is an accepted canon of construction that the coverage of a federal statute will not extend beyond our national boundaries unless such a legislative intent clearly appears." *Air Line Stewards and Stewardesses Association, International* v. *Trans World Airlines, Inc.*, 273 F. 2d 69, 70 (2d Cir. 1959). See also *Air Line Stewards and Stewardesses Association, International* v. *Northwest Airlines, Inc.*, 267 F. 2d 170, 178 (8th Cir. 1959), *cert. den.*, 361 U. S. 901 (1960); *Air Line Dispatchers Association* v. *National Mediation Board*, 189 F. 2d 685, 690 (D. C. Cir. 1951), *cert. den.*, 342 U. S. 849.

This canon of construction has been applied by this Court to a labor statute when the statute used words of universal application. *Foley Bros.* v. *Filardo*, 336 U. S. 281 (1948) ("every contract"). The legislative history, as well as the express language of the Air Carrier Amendment, not only fails to show a clear Congressional intent to give the Air Carrier Amendment world wide application but, on the contrary, demonstrates the intent of Congress was to limit the

territorial scope of the Air Carrier Amendment to the continental United States and its territories. *Air Line Dispatchers Association* v. *National Mediation Board*, 189 F. 2d 685, 690 (D. C. Cir. 1951), *cert. den.*, 342 U. S. 849.

Petitioner rejects this canon of construction as inapplicable to the Air Carrier Amendment on the novel theory that under international law the doctrine of the law of the flag governs the choice of the applicable law and that, therefore, the presumption is that the territorial scope of the statute was intended to reflect this doctrine of international law in accordance with the principles of comity. Or, as petitioner put the proposition somewhat more nakedly in its brief below, the doctrine of the law of the flag accords American-flag airplanes "the status of the territory of the United States for the purposes of applying its labor laws to the crew." *Brief of Air Line Stewards and Stewardesses Association, International*, P. 26, *Air Line Stewards and Stewardesses* v. *Trans World Airlines, Inc.*, 273 F. 2d 69 (2d Cir. 1959). This theory has been rejected by the circuit courts. *Air Line Stewards and Stewardesses Association, International*, 273 F. 2d 69 (2d Cir. 1959); *Air Line Stewards and Stewardesses Association, International* v. *Northwest Airlines, Inc.*, 267 F. 2d 170, 176-178 (8th Cir. 1959), *cert. den.*, 361 U. S. 901 (1960).

As the District Court in the instant case aptly put it, "the maritime analogy is inapplicable." *Air Line Stewards and Stewardesses Association, International* v. *Trans World Airlines, Inc.*, 173 F. Supp. 369, 379 (S. D. N. Y.), *aff'd*, 273 F. 2d 69 (2d Cir. 1959). It is manifest from the very cases the petitioner relies upon that even in the maritime area the doctrine of the law of the flag is not a mechanical rule under which the territorial scope of the maritime laws of the United States will be molded. See *Romero* v. *International Term. Operating Co.*, 358 U. S. 354, 382-384 (1959); *Lauritzen* v. *Larsen*, 345 U. S. 571, 583-592 (1953). See also *Cunard S.S. Co.* v. *Mellon*, 262 U. S. 100 (1923); *Scharran-*

berg v. *Dollar S.S. Co.*, 245 U. S. 122 (1917). The primary justification, of course, for assuming that Congress intended the scope of a maritime statute to be delineated by the law of the flag is the historic acceptance of that doctrine among nations "in reconciling our own with foreign interests and accommodating the reach of our own laws to those of other maritime nations." *Lauritzen* v. *Larsen*, 345 U. S. 571, 577 (1953); *Romero* v. *International Term. Operating Co.*, 358 U. S. 354, 382 (1959).

This justification is totally absent in the aviation industry. Not only is petitioner unable to cite one case in which this doctrine has been applied to the aviation industry, but contrary to petitioner's belief, it is not settled in international law that airplanes are subject to the doctrine of the law of the flag as are ships at sea. See e.g., *Cooper, National Status of Aircraft*, 17 J. Air L., 292, 309-311 (1950); *J. P. Honig, The Legal Status of Aircraft, The Hague Martinus Nijhoff* (1956), p. 135; *McNair, The Law of the Air*, 110-113 (2nd Ed. 1953). The requirement in such treaties as the Chicago Convention on International Civil Aviation of 1944 (61 Stat. 1180) that aircraft have a nationality is not equivalent to providing that the laws of the place of the aircraft's registration will govern all juridical relationships aboard such aircraft. Indeed, Article 1 of the Chicago Convention provides:

> "The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory." 61 Stat. 1180.

Since the doctrine of the law of the flag has not been adopted by nations as a tool of reconciling jurisdictional conflicts in the field of international aviation, it cannot be assumed that Congress intended the territorial scope of the Air Carrier Amendment to be shaped by this doctrine. Cf.

Romero v. *International Term. Operating Co.*, 358 U. S. 354, 382 (1959). Even if such a presumption did exist it would be overridden by the express language of Section 202 of the Air Carrier Amendment. The acceptance of petitioner's theory would, moreover, have the unfortunate result of having our nation's labor law applied to foreign flight personnel and the foreign nation's labor law applied to foreign ground personnel, a distinction totally unwarranted by the terms of the Air Carrier Amendment. See *Air Line Dispatchers Association* v. *National Mediation Board*, 189 F. 2d 685 (D. C. Cir. 1951), *cert. den.*, 342 U. S. 849.

D. Respondent does not dispute petitioner's claim that Section 401(k)(4) of the Federal Aviation Act of 1958, 49 U. S. C. 1371(k), formerly Section 401(1)(4) of the Civil Aeronautics Act of 1938, conditions a carrier's holding of a certificate upon the carrier complying with Title II of the Railway Labor Act. However, it is difficult to conceive how this section can be viewed as expanding the territorial scope of the Air Carrier Amendment. *Air Line Stewards and Stewardesses Association, International* v. *Trans World Airlines, Inc.*, 173 F. Supp. 369, 378 (S. D. N. Y.), *aff'd* 273 F. 2d 170 (1959). Moreover, ALSSA's own brief (p. 13) shows that the provision was urged by the pilots' union only as a protection for *American* personnel, not the foreign employees involved here.

Petitioner also seeks solace in Paragraph 2 of subsection k of Section 401 of the Federal Aviation Act of 1958, 49 U. S. C. §1371 (k)(2), which deals with rates of compensation for pilots and co-pilots who were engaged in overseas or foreign transportation. If anything, these provisions, as the District Court noted, show

"... a congressional awareness of and intention to differentiate between domestic and 'overseas or foreign air transportation,' and between 'pilots and copilots' and 'other employees.' Where Congress wished to grant specific benefits to selected categories of air carrier employees beyond those rights that are afforded generally by the Air Carrier Amendment to the R. L./A., Congress made explicit provision therefor."

Air Line Stewards and Stewardesses Association, International v. *Trans World Airlines, Inc.*, 173 F. Supp. 369, 378 (S. D. N. Y.), *aff'd* 273 F. 2d 69 (1959).

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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